

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA**

Minute Entry

Hearing Information:

Debtor: MARTIN EDWARD HUSSAK
Case Number: 4:14-BK-09856-BMW **Chapter:** 7
Date / Time / Room: TUESDAY, OCTOBER 02, 2018 10:45 AM COURTROOM 446
Bankruptcy Judge: BRENDA M. WHINERY
Courtroom Clerk: REBECCA VOLZ
Reporter / ECR: WESLEY STANGRET

Matter:

MOTION TO VACATE ORDER ENTERED ON 02/23/18 AT DOCKET ENTRY 129 APPROVING STIPULATED
COMPROMISE
R / M #: 130 / 0

Appearances:

H. LEE HORNER REPRESENTING MARTIN HUSSAK AND APPEARING IN PERSON
JANET LINTON REPRESENTING ALAN SOLOT AND APPEARING IN PERSON
ADAM NACH REPRESENTING THE CHAPTER 7 TRUSTEE AND APPEARING BY VIDEO

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Proceedings:

Mr. Horner reports that there is no resolution. If this Court allows, his client is prepared to prosecute the malpractice claim in state court at his expense.

The Court states that the order approving the settlement is a final order. The final order was not appealed. Is this motion being brought pursuant to Rule 60 of the FRCP?

Mr. Horner reports that his client did not receive notice. There was lack of due process. He filed his Notice of Appearance over the counter after the motion to approve the 9019 settlement had been filed. He was not aware of the pending motion.

The Court states that the settlement was noticed out before Debtor's counsel made an appearance. Did counsel review the docket after entering his appearance?

Mr. Horner reports that he was not aware the stipulation was pending. The last item he saw indicated that the matter was stayed.

The Court explains that the matter was not stayed. The order specifically stated that the Court would consider an amended stipulation and order which addressed all of the Court's concerns. Only the estate's interest and pre-petition claims were resolved. The post-petition claims were not resolved as part of this settlement. The debtor was not a party to the stipulation because it was strictly as to the estate's interest. Does anyone disagree with the Court's interpretation of its order?

Ms. Linton and Mr. Nach agree with the Court's interpretation.

Mr. Horner states that he now understands that only the estate's claims against Mr. Solot have been settled. His motion is resolved.

COURT: THE MOTION TO VACATE IS DENIED. THE ORDER AT DOCKET ENTRY 129 STANDS. NO FURTHER HEARINGS WILL BE SET.